

BEFORE THE DEPARTMENT
OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)	
FOR BENEFICIAL WATER USE PERMIT)	
NO. 55150-s41H BY TED R. AND)	ORDER
CREE M. HANNA, JR.)	

* * * * *

On April 2, 1984, the Department of Natural Resources and Conservation issued a Show Cause Order to Objectors Montana Power Company (hereafter, "MPC").

I. Memorandum of Cause by MPC

A. MPC's response to the Show Cause Order also reasserted several of their arguments made in response to the Proposal for Decision in Don Brown. The Department incorporates its response to MPC's arguments numbered 2, 3, 6, 8, 10 as set forth in the Final Order in Don Brown, April 24, 1984.¹

¹ These MPC arguments are:

2. Unappropriated water in the proposed source is non-existent.
3. Property rights will be adversely affected.
6. Evidence shows the Power Company's water rights are presently not being satisfied.
8. The Order changes the statutory burden of proof.
10. All Final Orders issued by the Department are afflicted with errors of law and are otherwise improper, and the Power Company has appealed every Final Order which adversely affects its rights.

MPC's argument number 10 is too vague to be responded to with particularity. MPC suggests the hearing officer look at the docket as evidence that MPC has presented arguments that Don Brown is afflicted with errors of law or otherwise improper. MPC's complaint, however, is still too vague to provide the Department any substantive clue as to the errors MPC claims infect Don Brown.


ORDER

1. MPC's objections to Application No. 55150-s41H by Ted R. and Cree M. Hanna, Jr. are hereby declared invalid and are stricken.

2. The Department notes that the Applicant remains responsible for proving, by substantial credible evidence, that the statutory criteria for the use applied for herein are met. Therefore, the Department will contact the Applicant to discuss submission of further information and possible modifications to the Permit Application.

3. If the Department determines that denial or modification of the Application is necessary, the Applicant may obtain a hearing by filing a request therefor within 30 days of Departmental notification on the decision.

DONE this 1 day of November, 1984.



Gary Fritz, Administrator
Water Resources Division
Department of Natural Resources
and Conservation
32 South Ewing, Helena, MT 59620
(406) 444 - 6601

AFFIDAVIT OF SERVICE

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

Donna K. Elser, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on November, 1984, she deposited in the United States mail, Certified 5 mail, an order by the Department on the Application by Ted R. & Cree M. Hanna Jr., Application No. 55150-s41H, for an Application for Beneficial Water Use Permit, addressed to each of the following persons or agencies:

1. Ted R. & Cree M. Hanna, Jr., Box 801, Bozeman, MT 59771-0801
2. Montana Power Company, c/o K Paul Stahl, P.O. Box 1715, Helena, MT 59624 hand deliver
3. Sam Rodriguez, Water Rights Bureau Field Office, Lewistown (inter-departmental mail)
4. Gary Fritz, Administrator, Water Resources (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION

by Donna Elser

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

On this 5th day of November, 1984, before me, a Notary Public in and for said state, personally appeared Donna Elser, known to me to be the Hearings Recorder of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Judy Kuhn
Notary Public for the State of Montana
Residing at Montana City Montana
My Commission expires 3-7-85



BEFORE THE DEPARTMENT
OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)	
FOR BENEFICIAL WATER USE PERMIT NO.)	ORDER TO SHOW CAUSE
No. 55150-s41H BY TED R. AND CREE M.)	
HANNA, JR.)	

* * * * *

The objection filed with the Department of Natural Resources and Conservation by the Montana Power Company to the above-named Application is identical in language to a number of objections previously filed by this entity with respect to similar applications. These objections all claim generally that there is a lack of unappropriated water available for the Applicants' purposes, and that diversions made pursuant to the Applicants' plans would result in adverse affect to the water rights claimed by this entity. See, MCA 85-2-311(1a) and (1b).

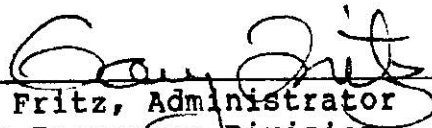
No claim is made either expressly or by implication in the present objection that the Applicants' proposed use is not a beneficial one, or that the Applicants' proposed means of diversion are not adequate for his purposes. See MCA 85-2-311(1d) and (1c). Nor has the Department in its own behalf indicated any concerns for the existence of these statutory criteria for a new water use permit. See generally, MCA 85-2-310(2).

Commencing with the Proposal for Decision In re Brown, and continuing through a number of applications where the Montana Power Company presented evidence at hearings held pursuant

thereto, the Department of Natural Resources and Conservation has concluded that the scope and extent of this entity's rights to the use of the water resource as indicated by the evidence therein did not warrant denial of the respective applications for new water use permits. Since the instant objection alleges similar matters to those involved in prior hearings, hearings on the factual issues suggested by the present controversy threaten a waste of time and undue time and expense to the parties involved. See generally, MCA 2-4-611(3); MCA 85-2-309.

WHEREFORE, the Montana Power Company is hereby directed to show cause why its objection should not be stricken and the instant Application approved according to the terms thereof. Said Objector shall file with the Department within 20 days of the service of this Order, affidavits and/or other documentation demonstrating that the present Applicants' are not similarly situated with respect to prior applicants for whom permits have been proposed over this Objector's objections; and/or argument that the proposed dispositions in such prior matters were afflicted by error of law or were otherwise improper, and/or any other matter that demonstrates that the present objection states a valid basis for denial or modification of the instant Application

DONE this 23rd day of July, 1984.



Gary Fritz, Administrator
Water Resources Division
Department of Natural Resources
and Conservation
32 South Ewing, Helena, MT 59620
(406) 444 - 6605

AFFIDAVIT OF SERVICE
MAILING

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

Donna K. Elser, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on July 23, 1984, she deposited in the United States mail, Certified mail, an order by the Department on the Application by TED R. & CREE M. HANNA, JR., Application No. 55150-s41H, for an Application for Beneficial Water Use Permit, addressed to each of the following persons or agencies:

1. Ted R. & Cree M. Hanna, Jr., Box 801, Bozeman, MT 59771-0801
2. Montana Power Co., 40 East Broadway, Butte, MT 59701
3. K. Paul Stahl, Attorney, 301 First National Bank Bldg., P.O. Box 1715, Helena, MT 59624
4. Scott Compton, Bozeman Water Rights Bureau Field Office, (inter-departmental mail)
5. Gary Fritz, Administrator, Water Resources (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION

by Donna K. Elser

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

On this 23rd day of July, 1984, before me, a Notary Public in and for said state, personally appeared Donna Elser, known to me to be the Hearings Recorder of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Judy Lohr
Notary Public for the State of Montana
Residing at Montana City, Montana
My Commission expires 3-1-85